

Investigation of an alleged breach of the Electricity Industry Participation Code 2010 by Genesis Energy Limited

On 17 January 2019, Haast Energy Trading Limited (Haast Energy) reported to the Electricity Authority (Authority) that it believed on reasonable grounds that Genesis Energy Limited (Genesis) had breached clause 13.2A of the Electricity Industry Participation Code 2010.

Under regulation 12 of the Electricity Industry (Enforcement) Regulations 2010, on 8 May 2019, the Authority appointed Alex Ehlert as investigator to investigate the alleged breach.

Under regulation 16 of the Regulations, the investigator must promptly notify the industry participant alleged to have breached the Code of the allegations that are being investigated. On 14 May 2019, the investigator gave Genesis such notice.

Under regulation 17 of the Regulations, at the same time as the investigator sends any notice under regulation 16, the investigator must publicise the matter under investigation, including the content of the notice given under that regulation. The investigator is hereby publicising the matter under investigation, and a copy of the notice given under regulation 16 is attached.

Any participant who considers that it is affected by the matter being investigated, and who wishes to become a party to this investigation, should notify the investigator within 10 working days after publication of this notice.

The investigator's contact details are:

Alex Ehlert
Senior Investigator
Electricity Authority
Phone: 04 460 8868
alex.ehlert@ea.govt.nz

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Harbour Tower
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NOTICE UNDER REGULATION 16 OF THE ELECTRICITY INDUSTRY (ENFORCEMENT) REGULATIONS 2010

Date:	14 May 2019
Addressee:	Genesis Energy Limited (Genesis)
Subject:	Alleged breach concerning a call of a swaption that was not disclosed
Investigator:	Alex Ehler, Senior Investigator, alex.ehler@ea.govt.nz (appointed investigator under regulation 12 of the Electricity Industry (Enforcement) Regulations 2010 (Regulations)).
Notifying industry participant:	Haast Energy Trading Limited (Haast Energy)
Provisions of the Electricity Industry Participation Code allegedly breached:	<p>13.2A Participant must make disclosure information readily available</p> <p>(1) Each participant must make all disclosure information in relation to the participant readily available to the public, free of charge, as soon as reasonably practicable after the participant becomes aware of the information.</p> <p>(2) Despite subclause (1), a participant is not required to make disclosure information readily available to the public if—</p> <ul style="list-style-type: none">(a) the disclosure information is excluded Code information;or(b) <i>[Revoked]</i>(ba) a reasonable person would not expect the disclosure information to be made readily available; or(c) the participant is bound by a legal obligation to keep the disclosure information confidential; or(d) doing so will be a breach of law; or(e) the disclosure information is already readily available to the public; or(f) the disclosure information concerns an incomplete proposal or negotiation; or(g) the disclosure information comprises matters of supposition or is insufficiently definite to warrant being made readily available to the public; or(h) the participant claims legal professional privilege or privilege against self-incrimination in respect of the disclosure information; or(i) the disclosure information is a trade secret. <p>(3) A participant that relies on subclause (2) must, as soon as reasonably practicable, make the disclosure information readily available to the public, free of charge, if subclause (2) ceases to apply to the disclosure information.</p>

- (4) If information ceases to be **disclosure information**, a **participant** is no longer required to make the information readily available to the public.
- (5) A **participant** that does not make information readily available to the public under this clause must, if required to do so by the **Authority**,—
 - (a) satisfy the **Authority** that subclause (2) applies to the **disclosure information**, if the participant relies on subclause (2); or
 - (b) satisfy the **Authority** that the information is not **disclosure information**.
- (6) A **participant** must not enter into a confidentiality agreement with another person for the purpose of avoiding making **disclosure information** readily available to the public under this clause.

Circumstances relating to the alleged breaches:

Haast Energy believes that Genesis should have disclosed that Meridian Energy Limited called a swaption it had entered into with Genesis.

Haast Energy considered that Meridian's call of the swaption amounted to a material change in Genesis' contract position and, therefore Genesis was required to disclose the call.

Date and time of alleged breaches:

The breach was alleged to have occurred between early November 2018 and 14 December 2018.

Please note, under regulation 16 of the Regulations, you must respond to this allegation, in writing, to the investigator within 10 working days of receipt of this notice (unless the investigator allows, in writing, a longer period).

Please provide your response by return email to the Investigator.

Your response should include:

Whether you believe you have breached the Code;

Whether there is another provision you consider more accurately describes the nature of the event;

A full explanation of the circumstances surrounding the alleged breaches;

Identification of any information provided in your response that you consider confidential and should not be included in the investigator's report under regulation 19 (regulation 15(2)).